



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2004

Ms. Ann Manning
McWhorter, Cobb & Johnson, L.L.P.
P.O. Box 2547
Lubbock, Texas 79408

OR2004-0614

Dear Ms. Manning:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195138.

The Lubbock Independent School District (the "school district") received a request for "copies of any 'hit list' or death threat written by [a certain named student] at Mackenzie junior high." You claim that the requested information is excepted from disclosure under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. In Open Records Decision No. 634 (1995), this office concluded that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions. *See* Open Records Decision No. 634 (1995). However, because you have submitted the requested information for our review and have requested our decision, we will consider your argument.

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. FERPA provides that no funds will be made available under any applicable program to an educational agency or institution that has a policy of denying, or which prevents, the parents of students attending a school of such agency or at such institution the right to inspect and review the education records of their children. *See* 20 U.S.C. § 1232g(a)(1). Furthermore, FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See id.* § 1232g(b)(1). Thus, FERPA affords parents the right to inspect their children's education records and the right to have some control over the disclosure of information from the records. *See id.* § 1232g(a)(1), (b)(1).

The term "education records" is broadly defined under FERPA:

those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* 43 C.F.R. § 99.3 (defining "education records"). After review of the information, we find that it directly relates to a student. Furthermore, the school district maintains the record. Thus, we agree that it is an education record subject to FERPA. *See* 20 U.S.C. § 1232g(d)

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *Id.* § 1232g(b); *see* Open Records Decision Nos. 332 (1982), 206 (1978). "Personally identifiable information" includes, but is not limited to, the following information:

- (a) the student's name;
- (b) the name of the student's parent or other family member;
- (c) the address of the student or the student's family;
- (d) a personal identifier, such as the student's social security number or student number;
- (e) a list of personal characteristics that would make the student's identity easily traceable; or
- (f) other information that would make the student's identity *easily traceable*.

34 C.F.R. § 99.3 (emphasis added). Thus, the school district may not disclose the information, even in redacted form, if the information could be traced to an individual student. *See id.* FERPA does not define the term “easily traceable.” Whether the release of information is easily traceable to a student is a question that is answered on a case-by-case basis. The Family Policy Compliance Office of the United States Department of Education has determined that “[w]here a request asks for a specific student’s disciplinary record, then it is reasonable to conclude that the student’s identity would be obvious to the requestor.” *See* Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education to Diane Walker, Director, Judiciary Program, Kennesaw State University (September 27, 2002) (available at www.ed.gov/policy/gen/guide/fpco/doc/kennesawuniversity.doc). Accordingly, because the requestor here named the student whom the information concerns, we find that FERPA requires the school district to withhold the information in its entirety. *See id.* § 1232g(b)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 195138

Enc: Submitted document

c: Mr. James Clark
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(w/o enclosures)